

**Report in relation to the draft law of the Statistical Plan of Catalonia 2023-2028 and amendment of Law 23/1998, of December 30, on the statistics of Catalonia**

**The Draft Law of the Statistical Plan of Catalonia 2023-2028 and amending Law 23/1998, of December 30, on Statistics of Catalonia, is presented to the Catalan Data Protection Authority, so that the Authority issues its opinion on the matter.**

**The draft law consists of a preamble, forty articles - divided into two titles -, two derogatory provisions, a final provision and an annex.**

**The Preliminary Project is accompanied by the General Report and the Impact Assessment Report.**

**Having examined the Preliminary Project and the documentation that accompanies it, and having seen the report of the Legal Counsel, the following is reported.**

#### **Legal foundations**

**I**

**(...)**

**II**

**The draft law being analyzed aims, on the one hand, to approve the Statistical Plan of Catalonia for the period 2023-2028 and, on the other hand, to amend articles 1, 9, 10 bis, 17, 18, 20, 21, 22 bis, 23, 41, 43, 60, 61 and of the final Provision of Law 23/1998, of December 30, on Statistics of Catalonia (hereafter, LEC).**

**In accordance with the General Report that accompanies the Preliminary Project, with the approval of the new Statistical Plan of Catalonia, in addition to responding to the legal mandate provided for in article 41.2 of the LEC, it is intended, among other objectives, "turn the Institut d'Estadística de Catalunya into a strategic node of information at the service of scientific research and the evaluation of public policies, through the integration and reuse of the data available from the Statistical System of Catalonia" and "enhance the intensive use of the data available to public administrations by all the bodies that make up the Statistical System of Catalonia, as well as the use of new sources of privately owned information and the application of methodological innovations in data processing."**

**Likewise, it is pointed out that the proposed modifications to the LEC respond, among others, "to the need to introduce those forecasts that enable the fulfillment of the objectives defined by the new statistical plan and some changes that make it possible to improve the application of the rule and overcome certain dysfunctions observed during its validity (...)."**

Both actions have a clear impact on the protection of personal data, given that a large part of the statistical actions will involve the processing of personal data, sometimes deserving of special protection. Treatment that acquires special characteristics not only because of the large volume of information that can be treated in each of the statistical actions that are carried out but, especially, because of the risks that, given the new possibilities of information treatment offered by technologies of information and communication, can be derived from the accumulation of information coming from different sources, which cover practically all areas of administrative action and even also, as we will see, from the private area.

Recital 162 of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), provides that "this Regulation must apply to the treatment of personal data for statistical purposes. The statistical content, the access control, the specifications for the processing of personal data for statistical purposes and the appropriate measures to safeguard the rights and freedoms of the interested parties and guarantee statistical confidentiality must be established, within the limits of this Regulation, by the Law of the Union or of the Member States. (...)."

Article 25 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), regulates the processing of data in the field of the public statistical function, in the following terms:

"1. The treatment of personal data carried out by the organizations that have been assigned the powers related to the exercise of the public statistical function will be subject to the provisions of its specific legislation, as well as Regulation (EU) 2016/679 and in this organic law

2. The communication of the data to the competent bodies in statistical matters will only be understood covered by article 6.1 e) of Regulation (EU) 2016/679 in cases where the statistics for which the information is required are required by a rule of law of the European Union or is included in the legally provided statistical programming instruments. In accordance with the provisions of article 11.2 of Law 12/1989, of May 9, of the Public Statistics Function, they will be provided strictly voluntarily and, consequently, the data may only be collected with the express consent of those affected which refer to articles 9 and 10 of Regulation (EU) 2016/679.

3. The competent bodies for the exercise of the public statistical function may deny requests for the exercise by those affected of the rights established in articles 15 to 22 of Regulation (EU) 2016/679 when the data are covered by the guarantees of statistical secrecy provided for in state or regional legislation".

In addition to all this, in accordance with article 5.d) of Law 32/2010, previously cited, this Authority is responsible for "ensuring compliance with the provisions that Law 23/1998, of December 30, of Statistics of Catalonia establishes with respect to the collection of statistical data and statistical secrecy, and to adopt the corresponding measures to guarantee the security conditions of the files created for exclusively statistical purposes, without prejudice to the powers attributed to the Statistics Institute of Catalonia (...)."

For all that, in this report we will focus on those aspects that may have a greater impact on the protection of personal data.

Before that, however, it should be noted that this Authority has issued several reports in this area of action, which it is interesting to mention, given that, as we will see, a large part of the considerations made in them are also applicable to the present case. Specifically, we refer to [Report PD 27/2013](#) on the Draft Decree on the Organization and Operation of the Statistics Institute of Catalonia, to [Report PD 20/2014](#) on the proposed modification of the LEC, to be integrated into the Draft Law on Fiscal and Financial Measures 2015, and in [Report PD 2/2015 on the Draft Law on the Statistical Plan of Catalonia 2016-2019 and amending the LEC](#).

### III

Article 40 of the LEC provides that "the Statistical Plan of Catalonia is the instrument for organizing and planning statistics of interest to the Generalitat", that is to say, it constitutes the framework in which term all statistical activity of the Generalitat.

In accordance with article 42 of the LEC, the Statistical Plan of Catalonia "has, at least, the following contents:

- a) The determination of the general objectives of the Statistical Plan and the specific objectives of the statistical activities it provides.
- b) The institutional collaboration that must be maintained in statistical matters.
- c) The criteria and priorities for executing the Statistical Plan."

The Draft Law being analyzed establishes the general objectives of the Statistical Plan of Catalonia for the period 2023-2028 (articles 4 to 21), the institutional collaboration framework (articles 22 to 24) and certain forecasts for the its execution (article 25 to 29). However, the statistical actions that will form part of the Statistical Plan are not specified nor, consequently, their specific objectives.

As we have seen, article 42 of the LEC provides that the Statistical Plan must foresee not only the general objectives of the Plan, but also the "specific objectives of the statistical activities that foresees". Therefore, it is the LEC itself that establishes that the Statistical Plan foresees specific statistical activities. Inevitably, in order to define the objectives of the specific statistics, it is necessary to have specified them beforehand.

In this same sense, article 44 of the LEC establishes that in those cases in which the Statistical Plan has already made the technical description of the specific statistical action, the Annual Program of statistical action may be limited to containing the statement of statistics. Therefore, the LEC foresees not only that the Statistical Plan must contain the specific statistical actions, but it can also include the specific technical description.

In the draft law that is being examined, reference is made to areas of statistical activity and, within these, some sub-areas are established (article 14 and annex). With regard to specific statistical activities, it seems that article 25 refers to the statistical action programs that will be approved by the Government. It does not, therefore, contain any list of the standardized statistical activities deployed in the Statistical Plan, grouped according to the specific objectives pursued, nor is it specified, for each statistical activity, its name, the specific objective intended, the bodies that involved or their cost. It follows, in fact, the line marked by the current Statistical Plan, approved by Law 5/2016, of December 23, which, as already highlighted in the [PD Report 2/2015](#), is distance from what was being established by the successive statistical plans that, until that moment, had been approved.

As already mentioned in the aforementioned [Report PD 2/2015](#) , and also in [Report PD 20/2014](#), it must be borne in mind that the execution of the Statistical Plan entails the processing of a lot of information tha

it has been obtained for other purposes, but with respect to which the same data protection regulations admit the compatibility of its use for statistical purposes.

Thus, in general, article 5.1.b) of the RGPD indicates that personal data will be collected "for specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose")".

With regard, specifically, to the treatment of special categories of data for statistical purposes, in accordance with article 9.2.j) of the RGPD it may be carried out when "the treatment is necessary, in accordance with article 89, section 1, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish adequate and specific measures to protect the interests and fundamental rights of the interested party."

The mentioned article 89.1 of the RGPD provides that "the treatment for archival purposes in public interest, scientific or historical research purposes or statistical purposes will be subject to the appropriate guarantees, according to the present Regulation, for the rights and freedoms of those interested. These guarantees will require that technical and organizational measures are available, in particular to guarantee respect for the principle of minimization of personal data. Such measures may include pseudonymization, provided that in that way said ends can be achieved. As long as those goals can be achieved through further processing that does not allow or no longer allows the identification of the interested parties, those goals will be achieved in that way.

In this context, article 25 of the LOPDGDD, to which mention has been made before, regulates the processing of data in the field of the public statistical function.

With regard specifically to the communications of personal data to the bodies that have attributed competences related to the exercise of the public statistical function, this article establishes, in its section 2, that said communication "solo se entenderá covered by article 6.1 e ) of Regulation (EU) 2016/679 (fulfilment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller) in cases where the statistics for which the information is required are required by a rule of European Union law or is included in the legally provided statistical programming instruments".

Remember in this sense that, as we already collected in our Report [PD 27/2013](#), the [Code of Good Practice of European Statistics](#) states as a principle (principle 2) that "statistical authorities must have a clear legal mandate to collect information intended for the preparation of statistics".

That is to say, the authorization conferred by this precept to communicate and process personal data for statistical purposes only operates with respect to that personal information that is necessary to carry out the specific statistical activities contemplated in the legally provided statistical programming instruments, such as the Statistical Plan of Catalonia.

This is even clearer in the case of special categories of data. In this case, it should also be borne in mind that, in accordance with article 25.2 of the LOPDGDD, when it comes to special categories of data or deserving of special protection, referred to in articles 9 and 10 of the RGPD, "in accordance with the provisions of article 11.2 of Law 12/1989, of May 9,

of the Public Statistics Function, will be a strictly voluntary contribution and, consequently, may only be collected with the express consent of those affected".

Therefore, from the point of view of data protection, it is necessary for the law approving the Statistical Plan of Catalonia to include not only the general objectives of the statistical activity of the Generalitat (as proposed in the Preliminary Draft examines) but also and fundamentally the specific statistical actions that comprise it, its specific objectives and, as far as possible, the essential elements of its technical description (especially if they affect special categories of data). Otherwise, communications or data acquisitions carried out for public statistical purposes would not conform to the requirements of the data protection regulations (nor, in fact, to those of the LEC) and, for therefore, they could not be considered legitimate.

It should be remembered that the use of information obtained for other purposes for further purposes of public statistics constitutes a limitation of the fundamental right to data protection. Although this limitation may be justified, it must be borne in mind that it will only be so to the extent that the rule that provides for such limitation, apart from fulfilling an objective of public interest, is proportional to the intended legitimate purpose.

This implies, in the light of the doctrine established both by the Constitutional Court (Judgment 76/2019, of May 22) and by the Court of Justice of the European Union (STJUE 8-4-2012 Digital Rights Ireland) and the European Court of Human Rights (SSTEDH of September 6, 1978 (Klas vs. Germany), August 2, 1984 (Malone vs. UK), July 30, 1998 (Valenzuela Contreras vs. Spain) or February 18, 2003 (Prado Bugallo vs. Spain), that said rule must meet the requirements of predictability for its addressees or of concretization of the cases affected and also of establishing the necessary guarantees.

This is, in fact, stated in Recital 41 of the RGPD: "said legal basis or legislative measure must be clear and precise and its application foreseeable for its recipients, in accordance with the jurisprudence of the Court of Justice of the European Union (in hereinafter, "Court of Justice") and the European Court of Human Rights."

In this sense, the cited STC 76/2019 is particularly illustrative, which declared the unconstitutionality of article 58.1 of the LOREG because this article provided for the treatment of data (in that case of special categories of data) without establishing clearly neither the assumptions nor the conditions in which the treatment could take place, and without providing adequate guarantees. Also, the TC makes it clear that it must be the law itself that establishes these guarantees, without them being able to refer to a later regulatory standard or to the decisions that may be taken subsequently by the data controller (FJ VI).

So, both to be able to evaluate this proportionality, and to guarantee that the possible people affected by the actions of statistics of interest of the Generalitat have sufficient and understandable information about the circumstances and conditions under which the public powers are enabled (the bodies and organs of the Statistical System of Catalonia) for the processing of your personal data, it is necessary to specify beforehand, in a rule with the rank of law, these statistical actions, their specific objectives and their description.

#### IV

One of the general objectives of the Statistical Plan that defines the Preliminary Project being examined is to "expand and improve the quality and scope of the statistical information generated by the Statistical System of Catalonia based on the consideration of the program of European statistics 2021- 2027, the use of new sources of information, the creation of new statistical products and the application of methodological innovations" (Article 4.b)).

In order to implement this objective, the Preliminary Project envisages, on the one hand and among other actions, the realization of public experimental statistics of an innovative nature, understood as "those activities that present innovative characteristics in the methodology used, the diversity of sources of information used or the mode of its dissemination" (article 10.1).

According to Article 10.2 of the Draft, "the preferred objective of public experimental statistics is focused on exploiting new sources of digital data, especially in the case of new statistics, in near real time and with reliable algorithms, as well as taking advantage of the potential of the massive data available to expand and improve the scope of official statistical production".

From the point of view of data protection, the use of new methodologies for the realization of public interest statistics should not represent any inconvenience as long as it is possible to know in advance and in clear terms the conditions under which they will be treated personal data. Therefore, aspects such as, among others, what are the statistics that justify the access and processing of the data, what is the intended objective, what are the sources of provenance of the data, what is the methodology used and which actors are involved, as well as the guarantees offered to safeguard the right to data protection, are crucial. Especially in those cases where this involves the processing of special categories of data (article 9 and 10 RGPD), which, given the terms of this article 10, it is not possible to rule it out.

At this point it is necessary to refer to one of the key judgments in the emergence of the protection of personal data, the Judgment of the German Constitutional Court of December 15, 1983 which, precisely, declared a law unconstitutional (law of census) which protected the collection of clearly excessive information for statistical purposes in principle. This is why it is appropriate for the law to clearly define what the "new digital data sources" will be, as well as the assumptions, conditions and guarantees for the use of big data analysis techniques.

Article 10.3 of the Draft provides that public experimental statistics "must be included in the annual program of statistical actions, with the specification of its object, the sources of information that are used and the type of expected results."

The annual program of statistical actions is approved by the Government. As explained in the previous legal basis, in Spanish law it must be a norm with the rank of law that establishes a certain data treatment, to the extent that it entails the limitation of a fundamental right, as is clear from article 53 CE and thus has come to recognize the aforementioned jurisprudence. Therefore, a Government decree would not be an appropriate rule to enable the intended processing of personal data. These issues should be provided for in the same law that approves the Statistical Plan.

v

With this same desire to deploy the aforementioned general objective of improving the quality and scope of the statistical information generated by the Statistical System of Catalonia (article 4.b)), the Preliminary Project also foresees that "the access to information and the treatment of this information coming from the massive databases available to private entities" (article 12.1).

The LEC establishes that the statistics of interest of the Generalitat must have "as a priority source" of information the archives and the administrative and statistical records available, in

reduce inconvenience to citizens and improve the efficiency of public spending (article 17.1). Likewise, it foresees that it is mandatory to supply the information necessary to prepare these statistics (article 34) and that said obligation extends to all natural and legal persons and also to all public administrations that have obtained information subject to statistics of interest of the Generalitat (article 35). Therefore, it is possible that the Generalitat's statistics of interest may also have those data held by private entities that, for that purpose, are relevant.

It must be taken into consideration that these entities, in order to achieve their objectives, may have a large volume of personal information of a very varied nature, including special categories of data.

As in the previous case, the Preliminary Project does not foresee in a clear and predictable way the circumstances of the processing of the data that derives from a forecast of these characteristics, nor does it set adequate guarantees.

According to its article 12.2, access to data held by private entities for statistical purposes will be subject to what can be established in the mechanisms of public-private collaboration that are adopted for that purpose between responsible entity and the body with powers in the field of public statistics. In this sense, the Draft is limited to defining the general aspects that must be considered in the design of these collaboration mechanisms.

Specifically, article 12.2 provides that "the design of the mechanisms of public-private collaboration that must facilitate access to private data for statistical purposes takes into account the following provisions and actions:

- a) Authorize access to private data and the processing of this data to all the statistical bodies of the Statistical System of Catalonia that require it to carry out the statistical activities entrusted to them.
- b) To regulate the aspects related to the obligation to supply private data, the formulas for eventual compensations, the preservation of confidentiality and the terms of the interoperability of the data in accordance with the provisions within the European scope on these aspects, the preservation of statistical secrecy and the protection of personal data.
- c) Promote public and private procurement aimed at access to massive data and the processing of this data for statistical purposes, so as to increase the exploitation of new digital data sources, especially in the case of new statistics, in near-real time and with reliable algorithms, and its use is favored through secure computing methods."

In accordance with the doctrine established both by the TJUE and by the TC, which has been repeatedly mentioned, it must be a rule with the rank of law that clearly establishes the assumptions and conditions in which the treatment can take place of data, and provide adequate safeguards, especially when special categories of data may be affected. It is therefore not admissible to refer to a later regulatory standard or to the decisions that, in this regard, may be taken subsequently by the data controller (STC 76/2019).

Therefore, it would be necessary for the present law, and not an agreement or any other instrument of collaboration, to establish clearly under what circumstances and under what conditions the statistical bodies of the Statistical System of Catalonia will be empowered to 'access to personal data available to private entities.

In the establishment of these questions, the provisions of article 25 of the LOPDGDD should be kept in mind, in any case, especially in relation to the provision of categories of specially protected data, referred to in articles 9 and 10 of the RGPD, and the linking of this action to the preparation of a specific public interest statistic that should be defined in the Statistical Plan itself and carried out with the requirement of the guarantees provided for in the LEC .

## VI

Another general objective of the Statistical Plan that defines the Preliminary Project that is being examined is to "facilitate access and use of the data available from the Statistical System of Catalonia for research purposes and in matters of public policy evaluation, and establish agreements with other public administrations for this purpose" (article 4.d)).

Article 30 of the LEC, in its current wording, already provides that Idescat and the other institutions and bodies of the Statistical System of Catalonia "must promote and facilitate the use of available statistical information to improve the "evaluation of the public policies of the Catalan administrations" (section 1), as well as that access "to confidential data for scientific purposes protected by statistical secrecy, under certain conditions established by regulation, as long as they do not allow a direct identification of people, respecting data protection legislation and statistical secrecy" (section 2).

Article 19.1 of the Draft Law being examined foresees, for this purpose, the creation of a collaborative system "among the members of the Statistical System of Catalonia".

In accordance with section 2.a) of this article 19, said system would be based on an "inventory of records and files of administrative origin that enables their statistical exploitation and also their use for research purposes and evaluation of public policies, especially of digital assets that have a vocation for permanence and that are subject to continuous updating, that cover the entire territory of Catalonia and that contain data or characteristics about natural or legal persons."

According to the draft law, this inventory "supplements the inventory of files with information of statistical origin that is already managed by the Registry of statistical files in charge of the Idescat" (Article 20.2 Draft). It is not clear, however, the need for this new inventory, given that, according to what is included in the Draft, it seems that it could unnecessarily duplicate the registration of statistical files.

The preliminary draft foresees that the coordination of the collaborative system corresponds to Idescat (article 20.1), to whom it attributes a series of new functions defined in article 20.2 and article 21.2.

With the attribution of these functions, it is intended, as stated in the preamble of the Preliminary Project itself, "to turn Idescat into a strategic node of information at the service of scientific research and the evaluation of public policies (.. )".

These forecasts can be said to go beyond what is established in article 30 of the LEC, which enables the reuse of statistical information held by the bodies and institutions of the Statistical System of Catalonia for research purposes and evaluation of public policies, given that they attribute a new role to Idescat that would not be linked to the preparation of statistics of interest to the Generalitat.

We are, therefore, facing a new type of activity which, as was explained in the Reports [PD 27/2013](#) and [PD 20/2014](#) at that time regarding the Integrated Statistical Information System, if it is of public interest to carry it out, it should be directly foreseen



by the LEC, as a rule that establishes the functions that the Idescat must exercise, especially taking into account the limited temporary validity of the law that approves the Statistical Plan.

The aim of the collaborative system is, on the one hand, to facilitate the use of the information available to the bodies and institutions of the Statistical System of Catalonia for research purposes.

The subsequent processing of data previously collected for a certain purpose for the purposes of scientific research is permitted by the data protection regulations, to be treated, as in the case of the subsequent processing for statistical purposes, for a compatible purpose (article 5.1 RGD). This, as long as this treatment for scientific or research purposes is subject to adequate guarantees for the rights and freedoms of those affected, in accordance with the RGD. This is established, let's remember, in article 89.1 of the RGD, which has been mentioned in FJ III of this report.

On the other hand, with the creation of this collaborative system, it is also intended to facilitate the evaluation of public policies. It is not clear if this is limited to each institution of the Statistical System of Catalonia, so that they can use the statistical information available for the evaluation of their own public policies, or if it refers to third institutions. Article 30.1 of the LEC refers to "improving the evaluation of public policies of the Catalan administrations". Therefore, this aspect should be clarified.

Regarding this further processing of data for the purpose of evaluating public policies, it cannot be ruled out that studies and projections on the impact of a certain public policy present elements that could lead to qualify it as a purpose with interest scientific and that, therefore, we are also dealing with compatible data processing.

The RGD does not define the term "scientific research", although recital 159 indicates that "the treatment of personal data for the purposes of scientific research must be interpreted, for the purposes of this Regulation, in a broad way, which includes, for example, the technological development and demonstration, fundamental research, applied research and research financed by the private sector. In addition, it must take into account the objective of the Union established in article 179, paragraph 1, of the TFEU to create a European research space. (...)".

In any case, with respect to the accesses or communications that are linked to the compatibility derived from their consideration as scientific research, the key element to take into account are the specific guarantees that can be offered.

In this sense, article 21 of the Draft provides the following:

"1. The collaborative system will guarantee security in the access and exploitation of the data required by research demands and in matters of public policy evaluation, and respect for the legal provisions referred to in section 3 .

2. In the processing of research requests and in matters of evaluation of public policies that require the integration of data from different statistical bodies, the Institut d'Estadística de Catalunya will be in charge of carrying out the integration and the statistical treatments necessary to guarantee the legal provisions referred to in section 3.

3. The users of the data must respect the provisions of statistical secrecy and the protection of personal data in all phases of data access and processing, as well as the publication of the results of its exploitation."

Regarding the establishment of guarantees, it is also necessary to bear in mind article 30.3 of the LEC, which provides that the Government must determine by decree the authorization procedure to access the data for said purposes, in accordance with the following requirements:

- "a) The research project must be requested by a recognized natural or legal person.
- b) A relevant research proposal must have been submitted.
- c) The information to which you want to have access must have been indicated.
- d) Adequate guarantees must be put in place for the protection of information security."

As we already explained in our [PD 2/2015 report](#), and as clearly stated in STC 76/2019, when it comes to special categories of data, the establishment of adequate guarantees cannot be referred to what is established by a provision regulatory

Regarding these forecasts, it is advisable to make the following considerations:

From the point of view of the principle of purpose (Article 5.1.b) RGPD) the demands or requests for information included in the collaborative system for the purposes of research or evaluation of public policies (Article 21.1 Draft) they must always be linked to the completion of a specific research or evaluation project that is of public interest. It would, therefore, be convenient for this to be reflected in article 21 of the draft law itself, incorporating a clause to that effect.

With regard to the provision of guaranteeing the security of access and exploitation of data (article 21.1 Preliminary project), remember that the establishment of the relevant security measures must be carried out in view of the result of a previous risk analysis (article 32 RGPD). In any case, in view of the concurrent circumstances, such as the volume of personal information subject to treatment and/or the sensitivity that this information may have, it could be convenient that in this case the encryption or encryption of the information both during its communication to the requesting entities and in the other phases of the treatment that allow it.

Section 3 of article 21 of the Preliminary Draft establishes that the people who access the data of the system must respect "the provisions of statistical secrecy and the protection of personal data (...)".

In accordance with article 25 of the LEC, statistical secrecy protects all personal data used to prepare statistics. It must be borne in mind that in the present case we are dealing with further processing of data for research purposes, not statistical ones. A provision such as that contemplated in this Article 21.3 of the Draft, which extends the scope of statistical secrecy to information not intended for statistical purposes, would lead to a distortion of this figure.

In any case, the need to respect the provisions of the data protection regulations is clear. In this sense, the express reference to this regulation must be positively assessed. But, beyond that, precisely because of the need to respect the right to data protection, appropriate guarantees should be expressly provided for.

Regarding this, in the processing of data for research or evaluation purposes, it is necessary to guarantee in particular respect for the principle of data minimization (Article 5.1.c) RGPD), which states that "personal data will be adequate, relevant and limited to what is necessary in relation to the ends for those who are treated". It would be good if it were expressly provided that the information and data to be supplied would be proportionate, necessary and essential to achieve the relevant research or evaluation project.

Apart from this, it should be noted that, in accordance with this principle, it is necessary to opt for that option which, while still allowing the intended purpose to be achieved, involves a lesser sacrifice of the right to data protection of the affected persons.

In the context in which we find ourselves, this would inevitably lead to the information to which we have access not allowing us to identify natural persons directly or indirectly, given that for a research or evaluation of a public policy based on a priori statistical information no it seems that this identification is necessary. In these cases, the adequate protection of the right to data protection would require the anonymization of the information (consideration 26 RGD).

Article 30.2 of the aforementioned LEC refers to the possibility of accessing the data "as long as it does not allow a direct identification of the persons", an expression from which it can be understood that indirect identification would be possible.

As was highlighted in Report [PD 2/2015](#) and also in Report [PD 20/2014](#), instead of making a reference to compliance with data protection regulations (article 21.3 Draft), it would be preferable to include expressly the impossibility of carrying out an indirect identification of the affected persons.

For those cases in which the nature of the research requires it, so that it may be necessary to temporarily monitor the study with respect to different people, which may make it necessary to have some type of identifier, it may be appropriate to resort to techniques of pseudonymization of data.

Article 4.5) of the RGD defines pseudonymization as "the treatment of personal data in such a way that they can no longer be attributed to an interested party without using additional information, provided that said additional information is listed separately and is subject to technical measures and organizational measures intended to ensure that personal data are not attributed to an identified or identifiable natural person". In other words, the attribution of a code that cannot be deciphered or linked to specific people by third parties other than the original person responsible for the information.

In this sense, it would be necessary to guarantee a technical and functional separation between the research team in question and those people who carry out the pseudonymisation and keep the information, in order to avoid re-identification.

In fact, the use of pseudonymisation of data is foreseen by the RGD itself, specifically in article 89.1, transcribed in FJ III of this report, as one of the measures that can be used in the field of data processing for research purposes to offer adequate guarantees and comply with the aforementioned data minimization principle. In any case, please note that pseudonymised information will remain personal information.

Apart from this, it would also be advisable to provide that the people who have access to the data must respect its confidentiality in all phases of data processing and once the project has been completed, even the linking of provision of services with the organization that carried it out.

Also that once the study or analysis of public policy has been done, the information must be destroyed, unless it is anonymized.

And, finally, it should be foreseen that in the publication of the results the non-identifiability of the affected persons must be guaranteed.

## VII

Regarding the modification of the LEC, articles 1, 9, 10 bis, 17, 18, 20, 21, 22 bis, 23, 41, 43, 60, 61 and also the final provision are modified.

From the point of view of data protection, it is particularly interesting to mention the modification of articles 10 bis and 17 of the LEC.

Article 31 of the draft law modifies article 10 bis of the LEC, in the following sense:

### "Article 10 bis

4. The Institut d'Estadística de Catalunya will issue a mandatory technical report and mandatory compliance of the projects referred to in section 3, especially in relation to nomenclatures, classifications, codes and other aspects of statistical homogenization, in order to make it possible to make statistical use of it and avoid the burden on the reporting units, in accordance with the principles of adequacy of statistical procedures of not excessive burden for the people surveyed and cost-effectiveness of the Code of good practices of the European statistics.

5. The statistical bodies of the Statistical System of Catalonia, in order to reduce the response burden of the reporting units, will be able to access the administrative and statistical files and records available from the public administrations of Catalonia, with maximum efficiency and effectiveness, guaranteeing the interoperability of information systems and the appropriate use of information for statistical purposes in accordance with the principles of professional independence of statistical authorities and statistical confidentiality. This access must be exclusively for statistical purposes and the information must be integrated into the statistics to the extent necessary for the deployment, preparation and dissemination of statistics of interest to the Generalitat. "

And article 32 of the draft law modifies article 17 of the LEC in the following sense:

### "Article 17

3. The statistical bodies of the Statistical System of Catalonia can access, with maximum efficiency and effectiveness, the administrative archives and records, including tax ones, that are in the possession of the public administrations of Catalonia, in order to use them for purposes exclusively statistics and integrate the information in the statistics to the extent necessary for the deployment, preparation and dissemination of statistics of interest to the Generalitat."

In both cases, the reference to the "Institute of Statistics of Catalonia" is changed to "the statistical bodies of the Statistical System of Catalonia", thus extending the authorization provided for in the LEC in favor of the set of bodies and bodies competent in matters of statistics that are part of the Statistical System of Catalonia (defined in article 7 LEC), in order to be able to access the administrative and statistical files and records held by the public administrations of Catalonia, with the exclusive purpose to use it for statistical purposes and to integrate the information into the Generalitat's statistics of interest.

Taking into account the powers attributed to these bodies by the LEC itself and the purpose of the access that is intended to be enabled, it seems reasonable that all the bodies that have to carry out the statistical activities have the possibility of access, all and that it should be noted that this can significantly increase the risks compared to the previous regulation, so it will be necessary to foresee measures to minimize them.

However, remember, as has been done throughout this report and is also included in [Reports PD 27/2013](#), [PD 20/2014](#) and [PD 2/2015](#), that the access and processing of data collected with other purposes for ulterior statistical purposes must necessarily be linked to the performance of a specific statistical action established in the corresponding Statistical Plan (article 25 LOPDGDD), given that it is what ultimately justifies access to the information to which refer to these articles. Therefore, reiterate the desirability of including in the law approving the Statistical Plan the specific statistical actions, in order not to contravene not only what is established by the data protection regulations, but the LEC itself (a

## Conclusions

Having examined the Draft Law of the Statistical Plan of Catalonia 2023-2028 and amending Law 23/1998, of December 30, on Statistics of Catalonia, it is considered that, from the point of view of the right to the protection of personal data, the observations made in legal grounds III to VII of this report should be taken into account.

Barcelona, December 30, 2021

Machine Translated